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Mr. JUSTICE GROSE,

ADDRESS,

ON

PRONOUNCING SENTENCE

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ORD THANET and Mr. FERGUSSON.

[Price FOURPENCE.]



THE
SUBSTANCE
OF
Mr. JUSTICE GROSE's
ADDRESS,
ON
PRONOUNCING SENTENCE,
IN THE
COURT OF KING'S BENCH,
On MONDAY, June 10th, 1799,
ON
LORD THANET and Mr. FERGUSSON.

Recommended to the Perusal of Every BRITON,
By a FRIEND to his COUNTRY.

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TO
THE PUBLIC.

A FRIEND to his COUNTRY has presumed to recommend the Perusal of the following Pages to EVERY BRITON. He has not done this rashly or inconsiderately. At a time when it is the wish and the object of designing and artful men to mislead the public mind, it appeared seasonable to invite the People

to read the ADDRESS of the learned Judge who pronounced Sentence on Sackville Earl of Thanet and Robert Fergusson, Esq. By so doing, it is not wished to keep alive any improper prejudices, or to excite any harsh or uncharitable opinions. The writer of these lines is incapable of entertaining a desire so unjustifiable. He hopes, by an extensive circulation of this ADDRESS, which issues from the press in a popular form, and at a very moderate price, to lead the unthinking and misguided to a due reflection; and, as most persons will form an opinion on a delicate and important subject, he judges that the facts and reasoning contained in this Publication, are well calculated to correct error, and to promote truth.

It

It may be proper to subjoin, that the ensuing Report of what emanated from the Bench on Monday last, is believed to be a pretty faithful Statement; though it is feared, as it was first published in a Morning Print of the following day, and consequently must have been written and printed in haste, it is not altogether free from inaccuracy. The learned Judge himself, as well as the Public, will, no doubt, be disposed to make allowance for imperfection thus occasioned.

Northumberland-Court,
June 13th, 1799.

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COURT OF KING'S BENCH, JUNE 10.

THE KING *v.* THE RIGHT HON. SACKVILLE
EARL OF THANET AND ROBERT FERGUSSON,
ESQ.

LORD THANET and Mr. FERGUSSON
came into Court to receive judgment.

MR. ATTORNEY GENERAL.

My Lords, I have the honour of addressing your Lordships on the part of the Prosecution in the case of Lord Thanet and Mr. Fergusson, and to inform you, that since my last Address to the Court on this subject, I have received, and have now in my hand, his Majesty's royal commands to cause to be entered a *nolle prosequi* on such parts of this information as have in fact raised any doubt, whether the judgment of the Court is discretionary. My Lords, in obedience to his Majesty's Royal Will and Pleasure, I have accordingly caused to be entered a *nolle prosequi* on the 1st, 2d, and 3d counts of this information. My Lords, his Majesty's gra-

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cious disposition has of course made it my bounden duty not to act on these counts of the information with respect to the nature of the judgment on which any doubt might have been entertained. In obedience to what your Lordships were pleased to intimate, I had taken the pains to make an extremely laborious investigation and research into the grounds on which I conceived this point turned. The result certainly has not been unsatisfactory to myself. But my duty, in obedience to his Majesty's commands, is to pray judgment on the 4th and 5th counts of this information. My Lords, your Lordships will allow me to state, that these counts charge a conduct highly dangerous, and utterly inconsistent with the orderly, and therefore with the safe administration of justice. I conclude what belongs to the duties of my office by repeating again, in the presence of your Lordships and of the Public, that my motive in commencing this prosecution was to secure the orderly and safe administration of justice; and while his Majesty does me
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the honour to entrust me with the execution of the duties of this office, in the discharge of my duty to him as the great conservator of public Justice—in the discharge of my duty to his people—his subjects, for whom the justice of the country is administered, I think it not improper to add, that I shall vindicate the honour of the laws, and the safety of those who administer them, on every occasion, by every means within my power.

Mr. JUSTICE GROSE.

Sackville Earl of Thanet, and Robert Fergusson, you and each of you have been found guilty of a misdemeanour by a verdict of a Jury of your country, on an information filed against you by his Majesty's Attorney General, charging you with a riot, and an endeavour in open Court, before his Majesty's Justices of *Oyer and Terminer*, to rescue Arthur O'Connor out of the custody of the Sheriff, in which he had been detained during and after the trial for High Treason, and thereby to enable him to go at large.

There are some counts stating it to have been accompanied with violence, but of these I have no occasion to take notice. Other counts charge you with having made a riot and disturbance in one of his Majesty's Courts of Justice, and interrupting and obstructing his Justices in the lawful and peaceable holding of that Court. The offences charged against you are ranked among the highest and most atrocious misdemeanours that can be committed in a country whose pride, whose boast, whose comfort consist in the free and uncontrolled administration of its laws. Language cannot describe your offence more forcibly and more eloquently than that which your Counsel used when he stated that it was *properly attacking Justice in its Sanctuary*. Impressed with the importance of this trial as it concerned the Public, and the persons accused, the Counsel on each side, in a most awful and most exemplary manner, discharged their respective duties. The Attorney General contented himself with stating the law as delivered down to us
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by our ancestors, with stating the facts to which that law was applied; and he stated them as became an advocate of the Public, plainly but perspicuously, without a single comment of aggravation. At the close of the case proved for the Crown, upon an intimation dropped by your Counsel that the evidence of some of the Defendants might be material in the exculpation of others of them; a question was put by the Court to the Attorney General, whether he thought the case was so clearly proved against some of the Defendants as to make it necessary for their Counsel to proceed in their defence. The Attorney General, knowing that in an English Court of Justice offences were to be plainly proved, and not to rest on doubtful evidence, consented to their acquittal, and they were immediately found Not Guilty, that such others of the Defendants who thought their evidence necessary to their exculpation, might have the benefit of their testimony. Your Counsel have eminently discharged their duty. The law stated by the Attorney

General was admitted—the evidence of the witnesses to be called for the Defendants was accurately and perspicuously stated, and every argument that ingenuity could suggest taken into its assistance—every advantage that the most persuasive eloquence could give it, was used to prove the improbability of the facts insisted on by the Crown, and to establish your innocence. And as to the Jury, their conduct was most exemplary. Called from their distant homes in another county, they obeyed the commands of Justice. They attended us with patience, and determined with deliberation. Their attention was evident from their discrimination—they acquitted one Defendant, and pronounced you guilty. The evidence was, in fact, irresistible. Whoever recollects the prominent features of the case as they were proved on the part of the Crown, and that which was not proved on your part, can hardly entertain a doubt of the propriety of the verdict. We cannot but remember the loose rumour in the town of Maidstone, of a
warrant

warrant to detain Arthur O'Connor in case he should be acquitted. There was an affected doubt whether it could be so, and that publicly notified. And there was as publicly a declaration from your Lordship (whether from a knowledge of what was intended, on mature deliberation, of that you best know) there was a declaration that it was fair that he, against whom there was known to be a warrant for High Treason, should have a run for it. I cannot but impute to you, Robert Fergusson, an attempt to induce the Judges to believe that the officers, who were known to be officers of justice, were the occasion of the tumult, when they were executing the very act which, to your knowledge, it was their duty to execute. We cannot but recollect how studiously you were placed in a situation well calculated to obstruct the officers, and to effect the rescue of Arthur O'Connor. Observing these, as well as the more minute circumstances, I wonder not the Jury pronounced

you guilty of that intention of which your witness, on his oath, did not dare to affirm he believed you innocent. Thus tried, and thus defended, you stand convicted, by an English Jury, of an offence (to the honour of modern times I speak) which has been unheard of in this kingdom during the present century. I know not whether, in all its parts, there was at any time so singular a transaction as the conviction of two persons, of whom the one is a Peer of Parliament and an Hereditary Sheriff, and the other an Officer of one of our Courts of Justice, combining to break the peace in the face of that Court, that had been assembled to try men accused of the greatest offence to society the law knows—High Treason; attempting to rescue from the arms of the law a man acquitted, it is true, of one High Treason, but charged with another—how justly is not here the question. Certain it is, if his conscience could have whispered him that he was innocent, it was not probable he would have de-
fired

fired to escape. As certain is it, that those who believed him innocent would have best consulted his reputation, as well as their own, by finding for him an opportunity, if otherwise he had not had one, of proving himself innocent. This is an offence very little known in this country, because from their cradles Englishmen are taught that the proud distinction they can boast between this and most other nations upon earth is, the uniform and uninterrupted administration of its laws, without which no nation can be free, and without which most governments must be intolerable. Rare, however, as this offence has been, our ancestors, sensible of its enormity, ranked it in a class of crimes next to that which was capital. Feeling the absolute necessity of preserving sacred that peace, that decorum, that awe, which is one of the very first principles of the administration of justice, as due to its Courts, they adopted a remedy by a punishment all but capital. So we read in
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our earliest law books, and I should observe it is a remedy not to be found among our written statutes, but known from the earliest times, and interwoven with the very Constitution. Human ingenuity is not equal to the task of enacting laws that are adapted to every possible case. It far exceeds the finite extent of human wisdom to apportion punishments exactly to every shade and gradation of crimes. These vary as much as the intellects and passions of one man exceed those of another. The same wisdom in our Constitution has provided a remedy for this by vesting in the King the brightest ornament of the Crown—the prerogative of Mercy; by which his grace may mitigate, but his power cannot add to, the sentence of the law. Most sincerely do we rejoice that such is the constitution of this Government. By a humane mind, the task imposed on the Court of passing discretionary sentences on crimes could not be borne, if it were not supported by the
consoling

consoling reflection that there resides elsewhere a power that can mitigate, and a wisdom that can correct, those errors which we feel that we, as men, may be liable to commit. This shews the wisdom of our ancestors in committing this sacred trust to the Sovereign. To the amiable exercise of the prerogative of his mercy, that which has passed this day, the declaration which his Majesty has given, amply bears witness. The benevolent exercise of the one proves the wisdom of the other. Those counts, which are entitled to the sentence which I have lately stated, are, by order of the King, now abandoned. They are no farther to be prosecuted, and none of them will, in future, I hope, be remembered, except the extreme danger and punishment attending the crime, and the Sovereign's grace in not requiring the sentence of the law to be inflicted on those who have been pronounced guilty of having committed it. Your feelings cannot be gratified on this occasion by the
benevolent

benevolent exercise of the prerogative more than are the feelings of those on whom the painful task is imposed of administering the penal justice of the country. Much, however, as has been remitted, much, too much, still remains on this record to be passed over without animadversion or considerable punishment. The offence described in the 4th and 5th counts, on which it is incumbent on this Court to give judgment, I must state ; it is, That you, with others, unlawfully and maliciously, to prevent the due and peaceable holding of Oyer and Terminer, during the continuance of that Session, in the presence of the Justices and Commissioners, did unlawfully and tumultuously assemble to prevent the due and peaceable holding of it ; did unlawfully, riotously, and tumultuously make a very great noise, riot, and disturbance, and did thereby interrupt and obstruct the Justices and Commissioners from the peaceable holding of that Session. Thus you are convicted

convicted of having broken the peace, violated the law, and of having interrupted the administration of justice in the presence of his Majesty, virtually represented by his Judges and Commissioners sent by him to do justice to his people. The horror and dismay this tumult occasioned to the mind of every man, feeling for the honour of his country and the support of its dearest rights, in preserving unfulfilled the proceedings of its Courts of Justice, it is more easy to conceive than describe, and yet by one witness it was described as an idle panic. I was astonished at the phrase, recollecting the evidence of the Learned Judge, who was a witness to this disgraceful scene, and whose veracity and firmness no man who knows him will doubt: Recollecting also, he on his oath states he felt great alarm, and thought himself and the other Judges in great danger; and to the truth of that assertion the record bears witness. In this attempt to obstruct the justice of the country, one great aggravation in the case

case of you, Sackville Earl of Thanet, is the very high and exalted station you hold in the country, the duties of which station must have suggested to you, how incompatible with your dignity, how inconsistent with the peace and order and with the security of all civil society, your conduct on this occasion has been. As a great peace officer of the Crown, as Hereditary Sheriff of an opulent and populous county, your duty called on you, first to keep the peace there, and to be the last man to break it any where. As a Peer and Hereditary Judge you should have considered how inconsistent it was with the honour, the decorum, the reverence, and the solemnity due to a Court of Justice. By your conduct you should have conformed to them, and by your example enforced the sense of them. As a Legislator you must have known how vain it is to make laws if the observance of them is not enforced; and on the tablet of your memory this eternal truth should have been engraven, that the
rank,

rank, and honours, and dignities you enjoy are the fruit of good order, of that order which is essential to the preservation, as well as the establishment of a well regulated monarchical constitution. Be assured, that if the time should ever arrive, which God forbid, that the boundaries of the orders of the Constitution are broken down, that very instant your rank, your offices, your stations, your honours, unsupported by the law of the land, must crumble into dust. As to you Robert Fergusson, my farther address will relate to you as a Gentleman, called to practice at the Bar of an English Court of Judicature, as a member of a profession as proud, as independent, as honourable as any that exists among men. Your respect for that profession, your duty to your Sovereign, your love for your country, ought to have been motives in your breast, powerful enough to have dissuaded you from assisting in any tumult at that awful moment. You should have reflected on the consequence of a crime, that goes to sap all society, and to
subvert

subvert all government. This was a duty which you owed to that Court of which you were an officer. You were in the daily habit of being informed that a prisoner in the custody of the law can never be discharged till the law in whose custody he is placed, shall have an opportunity of having it certified, that there is no other warrant lodged against him by the Public, or by any private individual. The hearing this was in your daily practice. If you had indeed been ignorant of it, the learned Judge, to whose information you should have paid respect, informed the bye-standers and yourself that such was the law and the practice. Being totally inattentive to his observation, you did this which argued too close a connection with the prisoner, in the intimate knowledge of that which he intended to attempt, and of the means by which he meant to make that attempt. Obedience to the law is of the very first rudiments of it. In your daily attendance in Court, you of necessity must have heard it: and it is impossible you should

should have forgotten that very material
 Chapter on the Crown Law, which follows
 on Misprision of Treason, standing con-
 trasted to that charge, and describing ac-
 curately the offence of which you have been
 guilty, and for which you now stand to re-
 ceive the judgment of the Court. Acquainted
 as you must have been with this subject, you
 stand here an offender against your own con-
 viction, and your own better knowledge.
 To the nature of your case the Court has
 paid great attention, and after most mature
 deliberation on the offences contained in the
 two last counts of this information, this Court
 doth order and adjudge, That you, Sackville
 Earl of Thanet, pay to the King a fine of
 1000l. ; that you be imprisoned in the Tower
 of London for the term of one year, and
 give security for your good behaviour for the
 term of seven years, to be computed from
 the expiration of that period, yourself in
 10,000l. and two sureties in 5000l. each,
 and that you be further imprisoned till such
 security be given.

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on you, Robert Fergusson,
 That you pay a fine to the King of 100l.;
 that you be imprisoned in his Majesty's gaol
 of the King's Bench for one year, and that
 you give security for your good behaviour
 for seven years, to be computed from the
 expiration of that period, yourself in 500l.
 and two sureties in 250l. each, and that you
 be further imprisoned till such security shall
 be given.



